

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS ("Settlement Agreement") is entered into and made effective as of the 4th day of March, 2016, ("Effective Date"), by and among Smoky Mountain Center for Mental Health, Developmental Disabilities and Substance Abuse, a Local Management Entity/Managed Care Organization, for themselves and their officers, managers, directors, legal counsel, and agents, ("Smoky"), and Strategic Interventions, Inc., a North Carolina corporation, for themselves and their successors, officers, directors, shareholders, legal counsel, and agents, ("Strategic"). The foregoing parties are at times hereinafter referred to individually, as a "Party," and collectively, as the "Parties."

RECITALS

A. Smoky is a local management entity/managed care organization ("LME/MCO") as defined in N.C.G.S. §122C-3(20c), and exists as a local political subdivision of the State of North Carolina pursuant to N.C.G.S. §122C-116. Pursuant to contracts with the North Carolina Department of Health and Human Services ("DHHS"), Smoky is responsible for management and oversight of all publicly-funded mental health, intellectual/developmental disabilities and substance use/addiction ("MH/IDD/SA") services for individuals whose Medicaid originates from a 23-county catchment area that includes Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes and Yancey counties (the "Catchment Area").

B. Strategic is a North Carolina mental health agency providing specialty treatment services to adults experiencing severe mental illness with seven offices serving 24 counties including Buncombe, McDowell, Rutherford, Burke, Lincoln, Gaston, Cleveland, Caldwell, Alexander, Yadkin, Forsyth, Catawba, Guilford, Alamance, Warren, Vance, Halifax, Granville, Henderson, Wilkes, Iredell, Surry, Davie, and Franklin. Six of the seven offices currently serve Smoky Health Plan Members (defined below).

C. Pursuant to Sections 1915(b) and 1915(c) of the Social Security Act (42 U.S.C. §1396n(b) and (c)), the U.S. Department of Health and Human Services has waived portions of North Carolina's traditional fee-for-service programs and replaced them with a managed care program (the "1915(b)/(c) Medicaid Waiver"). Smoky operates as a Medicaid Prepaid Inpatient Health Plan (pursuant to 42 C.F.R. § 438.2) on a capitated per member per month basis pursuant to its contract with the DHHS Division of Medical Assistance ("DMA") and in accordance with the 1915(b)/(c) Medicaid Waiver (the "DMA Waiver Contract").

D. Under the 1915(b)/(c) Medicaid Waiver, Smoky contracts with a limited network of providers (the "Closed Provider Network") to provide MH/IDD/SA services to eligible Medicaid beneficiaries originating from Smoky's Catchment Area ("Smoky Health Plan Members").

E. Strategic entered into an "evergreen" contract as a service provider in Smoky's Closed Provider Network to provide certain services to Smoky Health Plan Members under the 1915(b)/(c) Medicaid Waiver, beginning July 1, 2013 ("Existing Contract").

F. The Existing Contract authorized Strategic to provide, among others, Assertive Community Treatment ("ACT") Team ("ACTT") services in Marion and Morganton, North Carolina ("Marion ACT Team" and "Morganton ACT Team," respectively).

G. On October 22, 2014, Smoky sent a Notice of Overpayment to Strategic in the amount of \$242,247.12 ("Notice of Overpayment").

H. Following a reconsideration review, on December 29, 2014, Smoky sent Strategic a Notice of Decision revising the overpayment amount to \$104,449.68 ("Notice of Decision").

I. The Parties subsequently agreed to a payment plan for payback of the overpayment amount identified in the Notice of Decision (the "Payment Plan"), evidenced by a promissory note dated January 15, 2015 ("Promissory Note").

J. On March 6, 2015, Strategic filed for a contested case hearing in the Office of Administrative Hearings ("OAH") in a case filing bearing case number 15 DHR 1519, appealing the Notice of Decision ("OAH Overpayment Case").

K. On August 26, 2015, the Administrative Law Judge of the OAH ("ALJ Brooks") granted summary judgment in favor of Smoky, upholding Smoky's Notice of Decision to recover \$104,449.68, in the OAH Overpayment Case ("Summary Judgment").

L. On September 25, 2015, Strategic appealed the Summary Judgment by commencing an action against Smoky in McDowell County Superior Court in case file bearing case number 15 CVS 800 (“Overpayment Appeal”).

M. On or about December 22, 2015, Strategic paid in full the overpayment amount set forth in the Notice of Decision and also at issue in the Overpayment Appeal, plus agreed-upon interest, pursuant to the Payment Plan and Promissory Note.

N. The Parties acknowledge and agree that in addition to the allegations, claims, defenses, notices, motions, decisions, actions and arguments made by either Party in the Overpayment Appeal, each of the following arises out of or relates to the Overpayment Appeal: any and all allegations, arguments, claims or defenses set forth in or relating to the Notice of Overpayment, Notice of Decision, Payment Plan, Promissory Note and payments made thereunder, OAH Overpayment Case and/or Summary Judgment.

O. On May 27, 2015, Smoky sent Strategic a letter entitled “Notice of Contract Renewal,” notifying Strategic that Smoky would send a proposed contract for services to Strategic for the Parties to enter.

P. On or about June 30, 2015, Smoky sent Strategic a proposed contract for services to be provided by Strategic, which proposed contract reflected the Marion ACT Team and Morganton ACT Team could provide services through and until December 31, 2015 and which proposed contract Strategic rejected.

Q. On September 16, 2015, Smoky sent Strategic a Notice of Contract Termination (“Notice of Contract Termination”).

R. On October 14, 2015, Strategic commenced an action against Smoky in the Office of Administrative Hearings in case file bearing case number 15 DHR 7440, initially appealing the contract termination as described in the Notice of Contract Termination, and later supplementing the record to reflect its appeal of the contract termination as described in the Termination Decision (defined below), (“Termination Case”).

S. Following an in-person reconsideration review of the Notice of Contract Termination, Smoky’s Provider Sanction Reconsideration Panel unanimously upheld the Notice of Contract Termination to terminate the Existing Contract as expressed in the Notice of Level 1 Decision dated October 20, 2015 (“Level 1 Decision”).

T. Following an in-person reconsideration review of the Level 1 Decision, Smoky's Provider Sanction Reconsideration Panel unanimously upheld the Level 1 Decision to terminate the Existing Contract as expressed in the Notice of Level 2 Decision dated December 9, 2015 ("Termination Decision").

U. As a basis for the Termination Decision, Smoky alleged that Strategic owes it \$157,682.29 due to duplicate payments made to Strategic by Western Highlands Network, the previous LME/MCO for eight of the counties in Smoky's Catchment Area, ("WHN"). As a claim or defense in the Termination Case, Strategic denies that it owes money due to duplicate payments by WHN, and has alleged that WHN underpaid Strategic for its services rendered and caused other damages to Strategic at the close of the contract with WHN.

V. On October 21, 2015, Administrative Law Judge J. Randolph Ward ("ALJ Ward") entered a Temporary Restraining Order ("TRO"), enjoining Smoky from terminating Strategic during the pendency of the TRO. On December 4, 2015, ALJ Ward entered a Preliminary Stay of Contested Action ("Preliminary Stay"), enjoining Smoky from terminating Strategic during the pendency of the Termination Case.

W. The Parties acknowledge and agree that in addition to the allegations, claims, defenses, notices, motions, decisions, actions and arguments made by either Party in the Termination Case and to the findings and conclusions set forth in the TRO and the Preliminary Stay entered by ALJ Ward in the Termination Case, each of the following arises out of or relates to the Termination Case: any and all allegations, arguments, claims or defenses set forth in or relating to the Notice of Contract Renewal, proposed contract dated June 30, 2015, Notice of Contract Termination, Level 1 Decision and/or Termination Decision.

X. The Parties have mediated their claims successfully and, in order to avoid the uncertainty, time and expense of litigation, desire to and have agreed to resolve any and all matters and things in dispute between and among them arising out of or relating to the Overpayment Appeal and/or Termination Case, without any further trouble or expenses, on the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, for and in consideration of the promises and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party hereto, the Parties covenant, represent and agree as follows:

1. ***Incorporation of Recitals:*** The Recitals hereinabove of this Settlement Agreement are material provisions of this Settlement Agreement and are hereby incorporated herein by reference as if set forth herein in their entirety.

2. ***Mutual Agreement on Contracts and Terms Thereof.*** In full and final satisfaction and settlement of any and all matters and things in dispute by and between the Parties arising out of or relating to the Overpayment Appeal and/or Termination Case, including but not limited to all issues identified in the Recitals hereinabove, the Parties mutually agree to the following contract terms:

a. The Existing Contract shall automatically terminate effective June 30, 2016, without cause and with notice waived by both Parties.

b. The Parties shall execute two annual fiscal year contracts for Strategic to provide services existing on the Effective Date of this Settlement Agreement to Smoky Health Plan Members, from July 1, 2016 through and until June 30, 2018, using the Smoky template contract applicable to all agency providers in its provider network for such fiscal year, (together with the Existing Contract, the “Contracts,” or individually the “Contract”).

c. Smoky will not undertake to terminate any of the Contracts without cause.

d. Smoky may terminate or suspend any of the Contracts with cause upon thirty days’ written notice to Strategic detailing the grounds for termination. Provided, however, that in the event Smoky seeks to terminate any of the Contracts with cause, it will not undertake to terminate Strategic’s services under the Contract under which the Parties are then-operating or transfer clients of Strategic until all administrative remedies and any appeals are exhausted, or the Contracts have expired by their own terms. Cause is limited to:

i. Revocation, suspension or termination of Strategic’s participation in the North Carolina Medicaid program;

ii. Final involuntary loss of licensure or accreditation, after all administrative remedies and appeals of such are exhausted, in which event Strategic’s

services under the Contract may be terminated immediately following the thirty days' notice required therein; or

- iii. Final decision or judgment, after all administrative remedies and appeals are exhausted, which determines that Strategic's conduct constituted a violation of applicable federal or State laws, rules, or regulations with the force and effect of law or rule governing the provision of services under the 1915(b)/(c) Medicaid Waiver, and which warrants termination with cause in accordance therewith.
- e. Unless otherwise terminated in accordance with the terms of this Settlement Agreement, the fiscal year Contract beginning July 1, 2016 and ending June 30, 2017 ("FY2016-17 Contract") shall be automatically renewed for an additional one year term. Except as modified hereby, the fiscal year Contract beginning July 1, 2017 and ending June 30, 2018 ("FY2017-18 Contract") shall have the standard terms and conditions of the Smoky template contract applicable to all agency providers for such fiscal year. The term of the FY2017-18 Contract shall be for one year, and the term is without prejudice to the rights of Strategic under the DMA Waiver Contract and applicable federal and State laws, rules or regulations governing the 1915(b)/(c) Medicaid Waiver.

3. ***Mutual Agreement on Sale, Transfer, Assignment of Strategic's ACT Teams.*** The FY2016-17 Contract and the FY2017-18 Contract shall include the following provisions:

- a. In the event that Strategic sells, assigns or transfers any of its ACT Teams serving Smoky Health Plan Members, Smoky agrees that it will allow the assignment of Strategic's then-existing ACT Team contract to a purchaser that is an existing and approved Comprehensive Care Center ("CCC") within Smoky's network at the time of the sale to continue serving Smoky Health Plan Members.
- b. Authorization of any other purchaser to contract with Smoky to serve Smoky Health Plan Members will be subject to approval by Smoky in accordance with the then-effective Contract, Smoky's applicable contract with the NC Department of Health and Human Services, Division of Medical Assistance or its successor division, and applicable

federal and state laws, rules, regulations and statutes governing the provision of services under the 1915(b)/(c) Medicaid Waiver.

4. ***Settlement Payment:*** In full and final satisfaction and settlement of any and all matters and things in dispute by and between the Parties arising out of or relating to the Overpayment Appeal and/or Termination Case, the Parties agree to the following settlement payment terms:

a. Smoky shall pay to Strategic in full satisfaction and settlement the total sum of Seventy Five Thousand and 00/100 Dollars (\$75,000.00) in one lump sum payment, payable by check or wire transfer, and delivered to Strategic, or its designee, no later than 5:00 p.m. (EST) on the tenth day following the full execution of this Settlement Agreement by the last of the Parties.

b. Strategic agrees to accept the Settlement Payment on the terms set forth in sub-Paragraph 4a. above.

5. ***Dismissal of Cases with Prejudice:***

a. Promptly following delivery to Strategic of this Settlement Agreement executed by Smoky, but no later than 5:00 p.m. on April 8, 2016, Strategic shall cause to be executed and delivered to OAH a Notice of Voluntary Dismissal **With** Prejudice of the Termination Case against Smoky in proper form for filing and service. Strategic hereby directs, and agrees to instruct, its legal counsel at the law firm Brooks, Pierce, McLendon, Humphrey, and Leonard LLP ("Brooks Pierce") to promptly sign any and all documentation necessary to effectuate a dismissal of all pending claims, cases or actions by Strategic against Smoky.

b. Promptly following delivery to Strategic of this Settlement Agreement executed by Smoky, but no later than 5:00 p.m. on April 8, 2016, Strategic shall cause to be executed and delivered to the McDowell County Clerk of Superior Court a Notice of Voluntary Dismissal **With** Prejudice of the Overpayment Appeal against Smoky in proper form for filing and service. Strategic hereby directs, and agrees to instruct, its legal counsel at Brooks Pierce to promptly sign any and all documentation necessary to effectuate a dismissal of any and all pending claims, cases or actions by Strategic against Smoky.

6. ***Subject to Funding and Changes by State or Federal Government Agencies/Programs.***

Notwithstanding any provision to the contrary in this Settlement Agreement or in any of the Contracts, Smoky's obligations, covenants and/or agreements hereunder are subject to the following: (a) the reduction, revocation or termination of Federal, State or local funds allocated to the Smoky in a manner beyond the control of the Smoky for any part of the Contract term; (b) changes to policies, procedures, bulletins, manuals or directives imposed by the U.S. Department of Health and Human Services, the Centers for Medicare & Medicaid Services, the Substance Abuse Mental Health Services Administration, the N.C. General Assembly and DHHS and its Divisions; and (c) changes to the NC Medicaid program, the 1915(b)/(c) Medicaid Waiver or any subsequent Waiver applicable to the services provided by Strategic to Smoky enrollees, the Transitions to Community Living Initiative operated by Smoky in accordance with the August 2012 Settlement Agreement between DHHS and the U.S. Department of Justice, the Social Security Act, the Americans with Disabilities Act, or other governing federal or state laws, rules or regulations that would prevent, make impossible, or cause Smoky to be in violation of applicable federal or state laws, rules, regulations or its contracts with the DHHS governing it, or place substantial burden on Smoky to comply with any of the provisions of this Agreement.

7. ***Representations by the Parties:*** Strategic represents and warrants, as follows: Strategic has not transferred, assigned, encumbered or shared rights, interest or title in, to or under the Settlement Agreement and warrants that upon execution of this Agreement that no other person or entity shall have any of Strategic's rights in this Settlement Agreement.

8. ***Mutual Release:*** In consideration of the provisions set forth in Paragraphs 1 through 7 above and subject to the obligations and promises set forth in this Settlement Agreement, the Parties hereby release, acquit, and discharge each other, and their respective agents, insurers, and assigns; their past, present, and future divisions, departments, or legal entities and respective successors and assigns; and their respective shareholders, directors, officers, managers, members, employees, attorneys, and agents, whether herein named or referred to or not, of and from any and all actions, causes of action, claims, demands, liabilities, obligations, damages, costs, attorneys' fees, loss of service or termination of Contracts, expenses, compensations, and

all consequential, punitive, and treble damages of whatsoever kind or nature, whether known or unknown and whether contingent or liquidated, whether at law or in equity, from the beginning of time to and including the date of execution of this Settlement Agreement, which arise out of or in any way are related to the Overpayment Appeal and/or Termination Case (including but not limited to the Recitals hereinabove).

9. ***No Admission of Liability:*** The Parties hereto agree that this Settlement Agreement is a settlement of disputed claims, and that neither this Settlement Agreement nor the performance of any action hereunder shall be deemed an admission of any wrongdoing by or liability of any Party.

10. ***Non-Disparagement Agreement:*** The Parties agree that neither they nor anyone acting on their behalf shall hereafter make any derogatory, disparaging, or critical statement about any Party to this Settlement Agreement about the nature or adequacy of any conduct attributable to the Parties arising out of or related to the Overpayment Appeal and/or the Termination Case.

11. ***Confidentiality Agreement:*** Each Party agrees that it will not disclose the terms of this Agreement to anyone (except to its attorneys, accountants, employees or agents who need to know the terms of this Settlement Agreement in order to carry out their job responsibilities, corporate affiliates, parents, and subsidiaries, all of whom agree to abide by the disclosure restrictions set forth in this paragraph), unless disclosure is required by the DMA Waiver Contract, N.C.G.S. Chapter 132 or the NC Public Records law.

12. ***Joint Disclosure Statement:*** Notwithstanding the Confidentiality Agreement set forth herein, each Party is authorized, but not required, to disclose the following regarding this Settlement Agreement and resolution of matters and things addressed herein by and between the Parties: "The Parties have reached a mutual resolution of their dispute regarding the provision of services by Strategic and monitoring by Smoky. The resolution does not constitute an admission of any wrongdoing by any Party. In accordance with the agreement between the Parties, Strategic is a provider in good standing and has an ongoing contract to provide ACTT and PSR services within Smoky's network."

13. ***Advice of Legal Counsel:*** The Parties acknowledge that they are entering into this Agreement of their own accord and without coercion or pressure of any kind; that the Parties have sought and obtained or had the opportunity to obtain independent legal advice from counsel of their own selection; that they have been duly apprised of or had the opportunity to be duly apprised of their respective legal rights, whether legal or equitable, and regardless of whether arising under the laws of OAH, the State of North Carolina, United States, any territory thereof, or any foreign jurisdiction; that all of the provisions of this Settlement Agreement, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; and that they have given due consideration to such provisions and questions and answers and each understands them clearly.

14. ***Governing Law:*** The laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of this Settlement Agreement, and the proper venue for any dispute arising out of the Settlement Agreement shall be the Superior Court for Buncombe County or McDowell County, North Carolina.

15. ***Entire Agreement:*** This Settlement Agreement constitutes the entire understanding and agreement between and among the Parties hereto with respect to the matters herein and supersedes all prior discussions and written and oral agreements with respect hereto.

16. ***Binding Nature of Settlement Agreement:*** This Settlement Agreement shall be binding upon, and inure to the benefit of, Smoky and Strategic as each Party is defined herein.

17. ***Amendment:*** The terms of this Settlement Agreement may not be amended, modified, or waived, except by written agreement duly executed by the Parties hereto.

18. ***Attorney's Fees, Costs and Expenses:*** The Parties agree to pay and bear their own attorneys' fees and all other costs and expenses in connection with the dispute described in this Settlement Agreement, including the matters identified in the Recitals hereinabove, and in connection with this Settlement Agreement.

19. ***Incorporation of Settlement Agreement into Contracts.*** This Settlement Agreement shall be incorporated by reference into each Contract.

20. ***Authority of Representatives:*** Strategic Interventions and Smoky represent and warrant that their undersigned representatives have been, and are, duly, properly, and fully authorized to sign and enter into this Settlement Agreement on their behalf, and that they have not transferred, assigned, or conveyed to any other entity, person, or agency any of the obligations, claims, causes of action, rights, interest, or title which are the subject of this Settlement Agreement.

21. ***Counterparts:*** This Settlement Agreement may be executed in any number of duplicate originals or separate counterparts, all of which together shall constitute one and the same instrument.

WHEREFORE, each Party has caused this this Settlement Agreement to be executed by and through its duly authorized officer, with proper authority of its respective Board of Directors, under "Seal," effective as of March 4, 2016. Each Party signing below recognizes and agrees that its signature is signed with the intent that this Settlement Agreement is executed as a sealed instrument.

**Strategic Interventions, Inc., a North
Carolina corporation**

**Smoky Mountain Center, a Local
Management Entity/Managed Care
Organization**

By: _____ (Seal)
Fred Leonard, President

By:  _____ (Seal)
Brian Ingraham, Chief Executive Officer

Date: _____

Date: 4/6/16

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Strategic Interventions, Inc., a North
Carolina corporation

Smoky Mountain Center, a Local
Management Entity/Managed Care
Organization

By:  (Seal)
Fred Leonard, President

Date: 4/7/16

By:  (Seal)
Brian Ingraham, Chief Executive Officer

Date: 4/6/16